

## FACTSHEET

TITLE: CHANGE OF ZONE NO. 3196, from B-1 Local Business and R-3 Residential to B-2 Planned Neighborhood Business District and from R-3 Residential to AGR Agricultural Residential, requested by the Interim Director of Planning, on property generally located at S. Coddington Avenue and West Van Dorn Street.

STAFF RECOMMENDATION: Approval.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission  
Public Hearing: 11/03/99  
Administrative Action: 11/03/99

RECOMMENDATION: Approval (6-1: Newman, Schwinn, Steward, Hopkins, Taylor and Bayer voting 'yes'; Duvall voting 'no'; Hunter declaring a conflict of interest; Krieser absent).

### FINDINGS OF FACT:

1. The Planning staff recommendation of approval is based upon the "Analysis" as set forth on p.004-007, concluding that it is unusual for the Planning Department to propose changing the zoning of property owned by private citizens. Staff has taken this step since the current B-1 zoning pattern has the potential to impact both existing and future residential uses. The B-1 could also impact the Capitol View Corridors and Pioneers Park, which is on the National Register of Historic Places. The proposed zoning from B-1 to B-2 is in conformance with the goals of the Comprehensive Plan. The proposed expansion of the B-2 to include the east parking lot of Lee's Chicken is in conformance with the current land use and the proposed expansion of the neighborhood center on the north side of West Van Dorn Street. Staff has contacted all of the property owners in advance to explain the proposal. The property owner on the southeast corner may desire to expand the commercial zoning, but this is inappropriate and contrary to the goals of the Comprehensive Plan. The southeast corner is outside the future service limit and the ability of the City to provide with sanitary sewer service.
2. The testimony in support by the Planning staff is found on p.016-017; 018-019; and 020.
3. Testimony in opposition is found on p.017-020, and the record consists of one letter in opposition (p.015).
4. On November 3, 1999, a motion for approval failed 4-3: Newman, Steward, Hopkins and Taylor voting 'yes'; Schwinn, Duvall and Bayer voting 'no'; Hunter declaring a conflict of interest; and Krieser absent).
5. Upon further discussion, a second motion for approval carried 6-1 (Newman, Schwinn, Steward, Hopkins, Taylor and Bayer voting 'yes'; Duvall voting 'no'; Hunter declaring a conflict of interest; and Krieser absent). See Minutes, p.021.
6. On March 22, 2000, Change of Zone No. 3247 was approved by the Planning Commission which removes the R-3 to AGR portion from this request See p.003 and Bill No. 00-67).

FACTSHEET PREPARED BY: Jean L. Walker

DATE: March 27, 2000

REVIEWED BY: \_\_\_\_\_

DATE: March 27, 2000

REFERENCE NUMBER: FS\CC\FSCZ3196

W44444444444444444444444444444444444444

DATE: October 20, 1999

**PROPOSAL:** Application by the Interim Director of Planning to change the zoning from B-1 Local Business and R-3 Residential to B-2 Planned Neighborhood Business and from R-3 Residential to AGR Agricultural Residential for property generally located at S. Coddington Avenue and West Van Dorn Street.

APPLICANT: John L. Bradley, Interim Planning Director  
555 S. 10<sup>th</sup> Street  
Lincoln, NE 68508

CONTACT: Stephen Henrichsen  
Same as above  
(402) 441-6374

PROPERTY OWNERS: Northeast corner  
Lee's Inc. (Lee's Chicken) 1940 W. Van Dorn, 68522  
Lee & Alice Franks, Rural Route 7, Lincoln, NE, 68522

Southwest corner,  
Clarice Loomis, 2101 W. Van Dorn, 68522

Southeast corner,  
Stockwell Properties LLC, 3730 S. 14<sup>th</sup> St, 68502

Northeast corner,

The southern most 41.3 feet of the western 250 feet of Lot 109 Irregular Tract and the western 250 feet of Lot 147 Irregular Tract in the southeast 1/4 of Section 33, Township 10 North, Range 6 East, Lancaster County Nebraska.

R-3 to B-2 0.96 acres, more or less

All of Lot 147 Irregular Tract, except for the western most 250 feet, in the southeast 1/4 of Section 33, Township 10 North, Range 6 East, Lancaster County Nebraska.

Southwest corner,

B-1 to B-2 1.43 acres, more or less (Legal Updated 03/24/00)

The northern 250 feet of Lot 21 Irregular Tract; together with the northern 55.48 feet of Lot 22 I. T. and the eastern most ~~250~~ 233 feet of the northern most ~~250~~ 283 feet of Lot 25 I. T. all located in the north half of Section 4, Township 9 North, Range 6 East, Lancaster County Nebraska.

REVISED BY CHANGE OF ZONE #3247 3/22/00

~~R-3 to AGR 0.15 acres, more or less~~

~~—— All of Lot 21 Irregular Tract, except for the northern most 250 feet together with the southern 44.52 feet of Lot 22 I. T. and the eastern most 83 feet of the southern most 44.52 feet of Lot 25 I. T. all located in the north half of Section 4, Township 9 North, Range 6 East, Lancaster County Nebraska.~~

Southeast corner, B-1 to B-2 1.43 acres (Legal Updated 03/24/00)

The western most ~~250~~ 283 feet of the northern most ~~250~~ 283 feet of the northeast quarter of Section 4, Township 9 North, Range 6 East, Lancaster County Nebraska,

EXISTING ZONING: B-1 Local Business and R-3 Residential

DESCRIPTION OF PROPERTY: On the northwest corner is Lee's Chicken restaurant and parking lot. The southwest corner is occupied by an ice cream stand and residence while the southeast corner is vacant land.

SURROUNDING LAND USE AND ZONING: The land to the north and northeast is zoned R-3 and is proposed for single family use in the Lee's Place preliminary plat. All of the property on the northeast corner is proposed for annexation. The land to the south and southeast is vacant and is proposed for a change from R-3 to AG Agricultural in Change of Zone #3210. The land to the west is zoned AGR Agricultural Residential and is in large lot residential use.

COMPREHENSIVE PLAN SPECIFICATIONS: IN GENERAL CONFORMANCE. These properties are shown in Comprehensive Plan, Lincoln Future Land Use Plan, as commercial and residential. The proposal includes a slight expansion of the commercial zoning to reflect the current land use.

Though a property is shown as commercial in the Plan, not all commercial zoning districts are appropriate for every property designated as such in the Plan.

HISTORY: The existing commercial zoning pattern dates back to at least October 1953. It appears that the commercial zoning was arbitrarily established at 250 by 250 feet in area. The 250 by 250 foot area doesn't match the land use on any corner. In the 1950's, 'G' Local Business zoning was once on all four corners. By the 1970's the northwest corner was no longer zoned commercial. In 1979 the zoning was converted to 'B-1' Local Business.

The current R-3 zoning, 150 feet west of Coddington Avenue also appears to be arbitrary and it once extended 2 ½ miles in length from West South Street to West Old Cheney Road. In 1979 the previous A-2 Single Family Dwelling District was converted to R-3 Residential. This small area of R-3, together with the R-3 in Change of Zone #3210 are the last remnants of the 150 foot strip zoning pattern west of Coddington.

RELATED ITEMS: Change of Zone #3209 and 3210

#### ANALYSIS:

1. This proposal by the Planning Department is to update the zoning at the corner of Coddington and West Van Dorn. It is one part of three related change of zone requests along West Van Dorn Street. These actions were the result of numerous recent actions in this area:
  - Lee's Place subdivision and annexation, which will bring residential uses near the intersection of Coddington and W. Van Dorn. (addressed in Change of Zone #3196)
  - VestECKA's Villa Van Dorn subdivision and annexation which brings residential uses closer to I-1 zoning east of the Burlington Northern railroad tracks, north of West Van Dorn. (addressed in Change of Zone #3209)
  - Development of the Bison Trail leading from Wilderness Park to Pioneers Park south of West Van Dorn and the purchase of the southeast corner of B-1 zoning by Stockwell Properties LLC from the State of Nebraska. (addressed in Change of Zone #3196 and #3210)
2. It the summer of 1999 it became apparent to the Planning staff that the current zoning in this vicinity was significantly out of date and could potentially impact developing land uses in the area. An extensive review of the zoning along West Van Dorn was conducted by staff and it was found that most of the land was owned by either the State of Nebraska, City of Lincoln, Lancaster County or the Lower Platte South Natural Resources District (NRD). There

are a few parcels that are in private ownership. Change of Zone #3196 involves about 5 acres of land that is all privately owned.

3. This area also involves land in the three major Capitol View Corridors from Pioneers Park. (see map) These view corridors are mapped, but the Lincoln zoning ordinance does not provide any protection for these view corridors from Pioneers Park to the Capitol.

4. The goals of the Comprehensive Plan state:

*“Protect and enhance the State Capitol, its Environs, and vistas to our premier landmark as a particular asset and responsibility of this community.” (Page 175)*

5. The Capitol Environs Committee reviewed Change of Zone #3196 on June 24, 1999 and unanimously recommended, with one abstention, that the zoning be changed from B-1 to B-2 to protect the Capitol View Corridors.

6. Pioneers Park was listed on the National Register of Historic Places in 1993. The historic landscape plan for the park and subsequent tree plantings established three view corridors from the bison statue, the columns and the sled run. The goals of the Comprehensive Plan also encourage preservation of historic buildings and landscapes.

7. The following table compares, in general, the B-1 and B-2 districts.

	B-1	B-2
Use Permit Required	No	Yes
Major Commercial Uses allowed “by right” <sup>1,2</sup>	-Banks, -Restaurants -Service Stations, -Retail sales, excluding auto sales - Office buildings	-Banks -Restaurants -Service stations -Retail sales, excluding auto sales -Office buildings -On/off premise alcohol sales
Major Commercial “Conditional” Uses <sup>1</sup>	-Auto wash -Motels&Hotels -Early childhood care facilities -Contractor sales and showroom	-Auto wash -Motels&Hotels -Early childhood care facilities
Major Special Permitted Uses	-Health Care Facilities -On/off premise alcohol sales	-Health Care Facilities
Setbacks: Front Rear Side	20' 30' or 20% of depth 0 (10' if abutting residential)	50' 0 (50' abutting residential) 0 (20' abutting residential)

Setback adjustable by Council?	No	Yes, under Use Permit
Parking allowed in front yard?	Yes	No
Parking allowed in rear yard?	Yes	Yes
Off Premise Signs (Billboards)	Area: 300 S. F. Height 35'	Not permitted
On Premise Pole Signs	Area: 150 S. F. Height 35'	Area: 100 S. F. Height 25'
<sup>1</sup> See attached chapters of the Zoning Ordinance for a list of all uses. <sup>2</sup> All uses in the B-2 district require approval of a Use Permit. However, some uses are listed as "permitted" some as "conditional" and others require a "Combined Special Permit/Use Permit". Conditional uses are allowed if specific conditions are met at the time of building permit.		

8. In general, the B-1 and B-2 districts allow the same type of commercial uses. The B-2 district has greater setbacks, but allows the City Council the flexibility to adjust the setbacks depending upon the circumstances.
9. The B-2 zoning is more in keeping with the developing character of the area. This area is no longer remote from the city limits and generally undeveloped. Subdivisions with over 250 dwelling units are in process on the north side of West Van Dorn. The B-2 zoning is more typically used in newer developing areas and is also the commercial zoning in place at Coddington and West A Street.
10. The goals of the Comprehensive Plan state:

*"Maintain and encourage retail establishments and businesses that are convenient to, and serve, neighborhood residents, yet are compatible with, but not intrusive upon residential neighborhoods.*

*Maintain zoning and traffic patterns that are compatible with existing land uses and retain the character of rural and urban neighborhoods."*
11. The B-2 zoning with its greater setbacks and use permit provision is a better district to ensure that the retail uses are convenient, yet still compatible with the developing residential uses.

#### Northeast Corner

12. The change from B-1 to B-2 will not have a significant impact on the existing commercial uses. Lee's Chicken is a permitted uses in the B-2 district. The Lee's building and parking don't meet the setbacks of the B-2 district, but would be grand fathered as pre-existing. If the property were to redevelop, it would have to meet the B-2 setbacks or request a setback reduction through the use permit process.

13. The proposal expands the commercial B zoning on the northeast corner to include all of the Lee's Chicken property. Currently the eastern 200 feet, about 1 acre, is used for parking but is zoned R-3. The proposed zoning will actually increase the area available for potential commercial buildings on the property.
14. Change of Zone #3195, proposed by Krueger Development will further expand the B-2 zoning on the northeast corner. This change of zone will be scheduled with the Planning Commission upon submission of a use permit by the developer. This will provide over 5 acres of potential commercial space on the northeast corner alone.
15. The proposed change of zone will create a district of 5.25 acres. The minimum district size for the B-2 district is 5 acres.

#### Southwest Corner

16. The zoning line on the southwest corner does not match the existing lot lines. The zoning splits property owned by Clarice Loomis, who owns the ice cream stand and adjacent house. In discussions between staff and Ms. Loomis she stated she was not in favor of any expansion of the commercial zoning of her property. The portion of her property that is zoned AGR and R-3 is not in commercial use. Staff is recommending that the small portion of R-3 zoning be eliminated so that it matches the surrounded AGR zoning.
17. The ice cream stand is a permitted use in the B-2 district. It appears that the property today will meet all the front, rear and side yard setbacks of the B-2 district.

#### Southeast Corner

18. On the southeast corner is vacant land that was owned by the State of Nebraska for decades, but was sold within the last year to Stockwell LLC. Staff has had discussions with Don Linscott of MEGA Corporation on behalf of the principal owner, Sampson Construction. At this time the property is outside the future service limit and appears it can not be provided with sanitary sewer service.
19. Staff and Mr. Linscott discussed the possible expansion of the commercial zoning to the east to match the expanded commercial zoning of Lee's Chicken. However, since the area can't be served by sanitary sewer, staff doesn't support expanding commercial uses outside of the city limits. The proposed expansion area also includes a drainage way and tree mass.
20. The goals of the Comprehensive Plan state:

*"Concentrate new growth in the Lincoln urban area and in the villages throughout Lancaster County."*

*Preserve the rural quality of life while allowing for the quality growth of Lincoln and the incorporated communities on the county and encourage contiguous development.” (Page 37)*

21. It would be contrary to the goals of the Plan to expand the B-2 zoning on the southeast corner while it is outside the city limits and can't be provided with sanitary sewer service.
22. The land currently zoned B-1 is vacant and is mostly occupied by a tree mass and drainage way. It appears marginally suitable for commercial use without filling in the drainage way. If the property had been owned by the State of Nebraska, the Planning Department would have proposed it be rezoned from B-1 to AG Agricultural. The use permit provision of the B-2 zoning will allow for review of the site plan and grading and drainage. However, the zoning doesn't prohibit the owner from removing all of the trees and obtaining the appropriate permits to fill in the natural drainage way. Staff will try to work with the owner on an appropriate development plan.

#### CONCLUSION:

It is unusual for the Planning Department to propose changing the zoning of property owned by private citizens. Staff has taken this step since the current B-1 zoning pattern has the potential to impact both existing and future residential uses. The B-1 could also impact the Capitol View Corridors and Pioneers Park, which is on the National Register of Historic Places. The proposed zoning from B-1 to B-2 is in conformance with the goals of the Comprehensive Plan. The proposed expansion of the B-2 to include the east parking lot of Lee's Chicken is in conformance with the current land use and the proposed expansion of the neighborhood center on the north side of West Van Dorn Street.

Staff has contacted all of the property owners in advance to explain the proposal. The property owner on the southeast corner may desire to expand the commercial zoning, but this is inappropriate and contrary to the goals of the Comprehensive Plan. The southeast corner is outside the future service limit and the ability of the City to provide with sanitary sewer service.

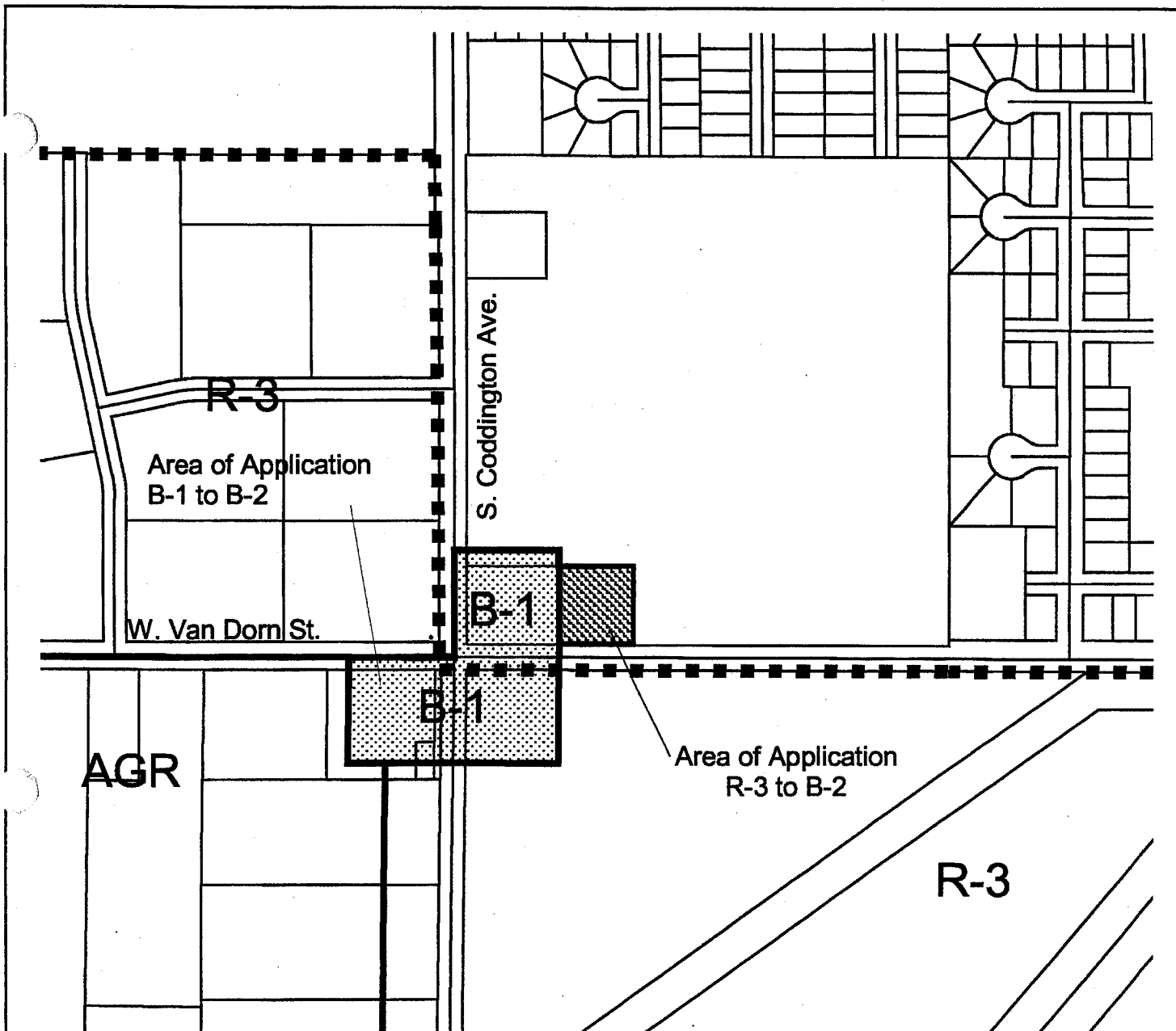
STAFF RECOMMENDATION: Approval.

Prepared by:

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Stephen Henrichsen, AICP  
Planning Department





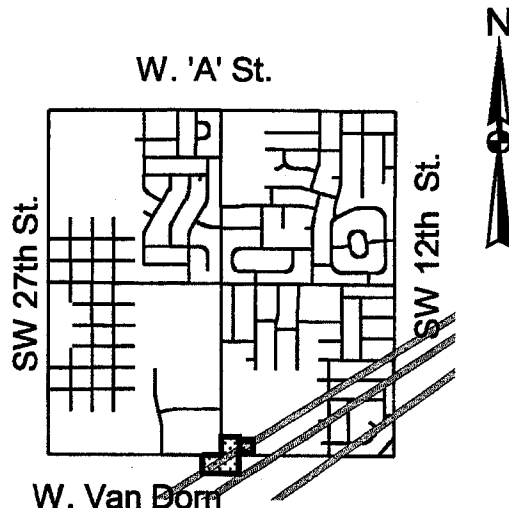
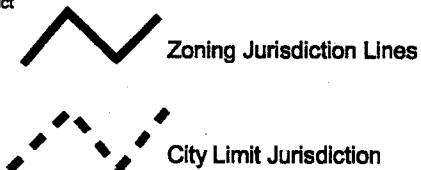
## Change of Zone #3196 W. Van Dorn & Coddington

### Zoning:

R-1 to R-3	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-4	Interstate Commercial District
I-1	Highway Business District
I-2	Highway Commercial District
I-3	General Commercial District
P	Industrial District
	Industrial Park District
	Employment Center District
	Public Use District

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One Square Mile  
Sec. 33 T10N R6E

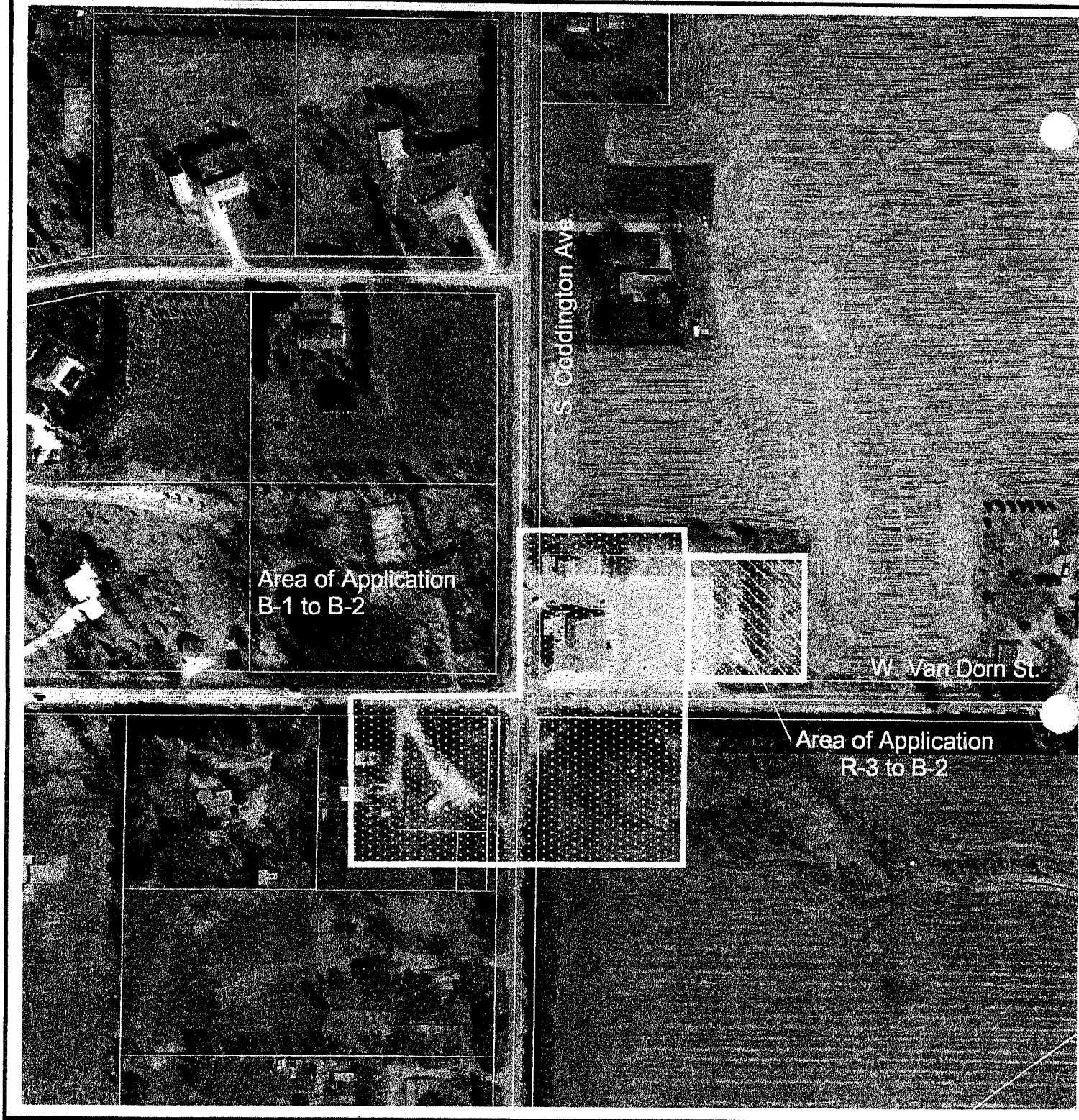


Sheet 1 of 3  
Date:

Lincoln City - Lancaster County Planning Dept.

03/23/00

009

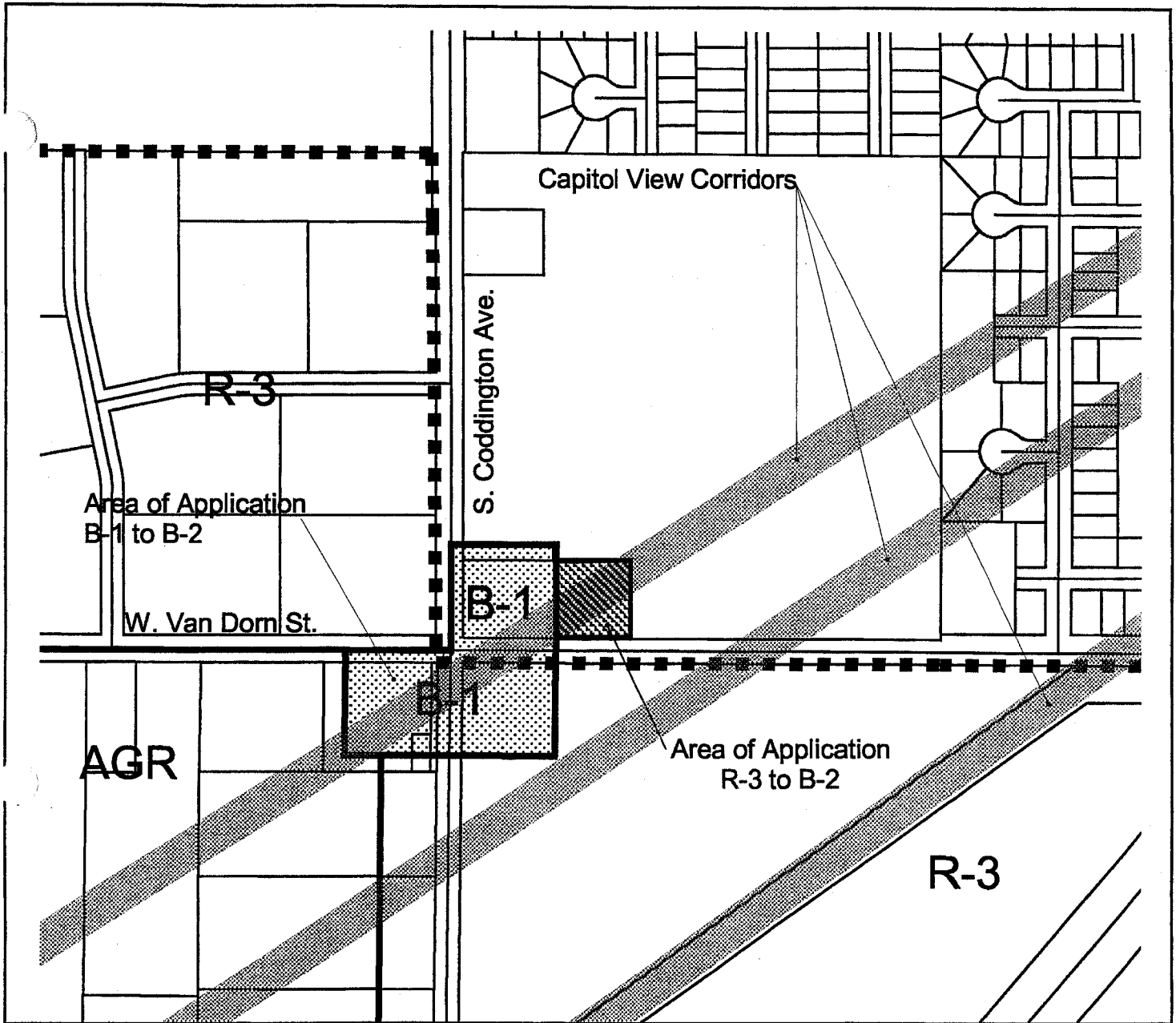


**Change of Zone #3196  
W. Van Dorn & Coddington**



Sheet 2 of 3  
Date: 03/23/00

Photograph Date: 1997 **010**

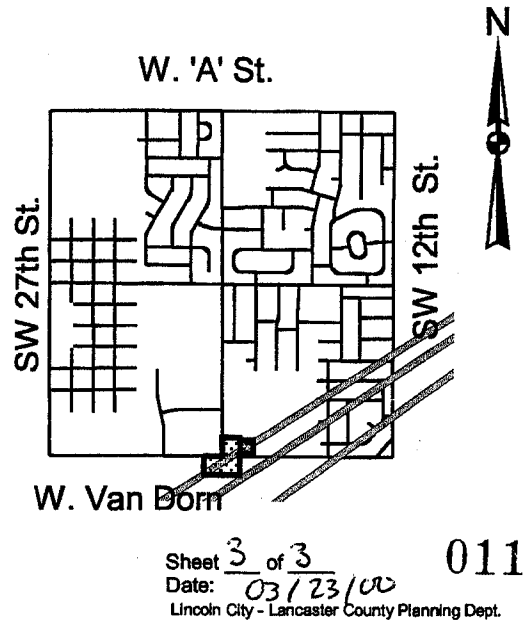
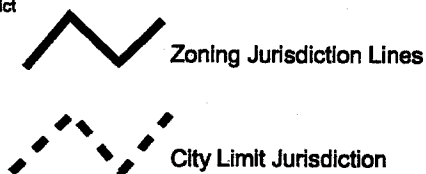


## Change of Zone #3196 W. Van Dorn & Coddington

### Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-4	Interstate Commercial District
I-1	Highway Business District
I-2	Highway Commercial District
I-3	General Commercial District
P	Industrial District
	Industrial Park District
	Employment Center District
	Public Use District

One Square Mile  
Sec. 33 T10N R6E



Sheet 3 of 3  
Date: 03/23/00  
Lincoln City - Lancaster County Planning Dept.

011



COMMERCIAL & INDUSTRIAL REAL ESTATE

012

October 26, 1999

Stephen Henrichsen  
555 South 10th, Room 213  
Lincoln, NE 68508

Dear Steve:

I have talked with Rick Krueger who indicated he would allow an easement for the property on Coddington and W. Van Dorn for a sanitary sewer line.

I also talked with Jack Tuma with ESP and he indicated we could bring sanitary sewer over to this site and would be able to have a sewer connection for the parcel as shown on Exhibit "A".

I would like to request we be included in the B-2, not only for the B-1, but also for all the property fronting Van Dorn except the back 50 feet.

Please call to discuss the above-mentioned.

Thank you.

Sincerely,

**MEGA CORPORATION OF LINCOLN**

A handwritten signature in cursive script that reads "Donald W. Linscott".

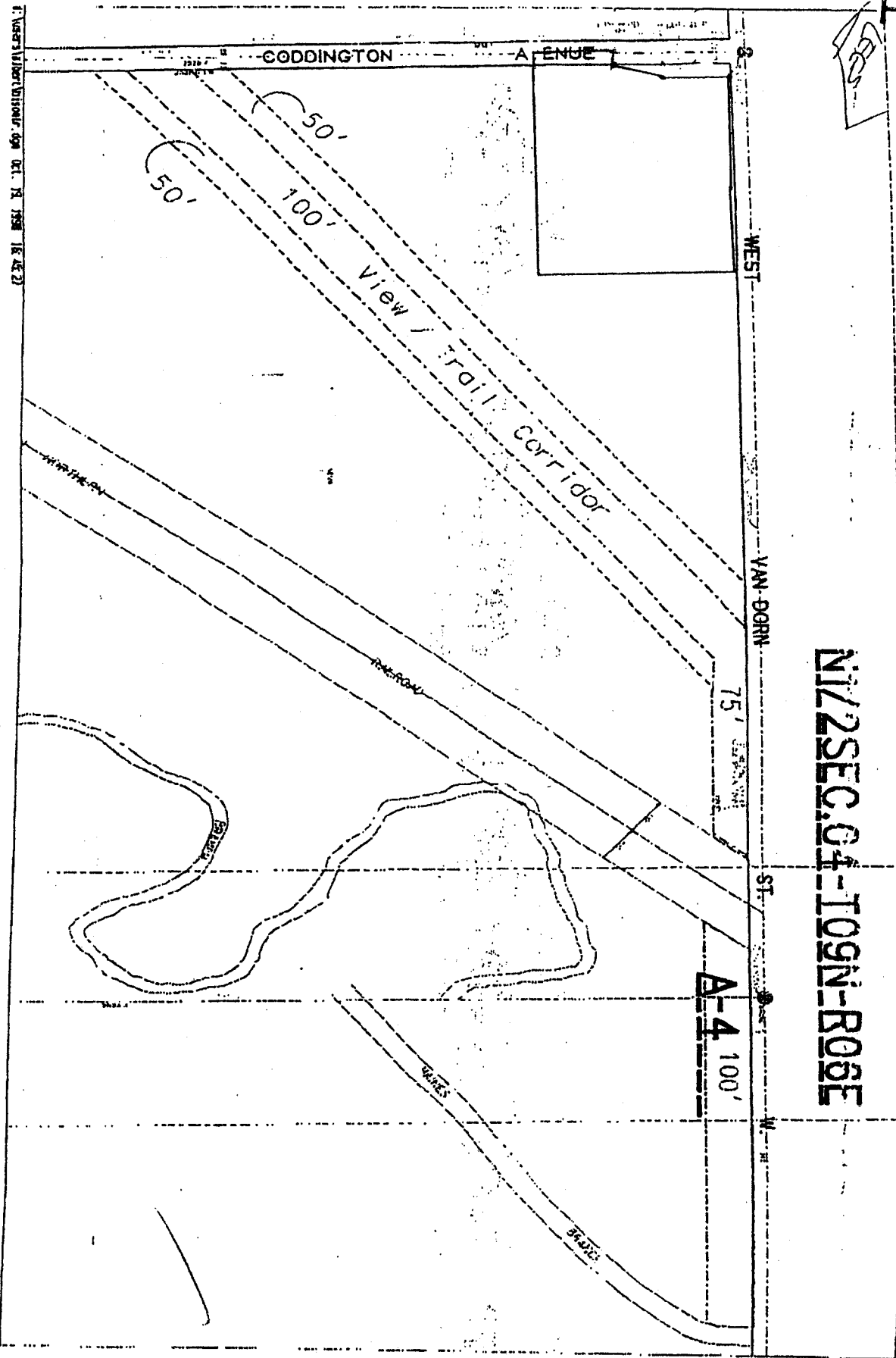
Donald W. Linscott, SIOR, CCIM

DWL:tg  
Enc

cc: Rick Krueger  
Jack Tuma

012

1. Visitation/Visitation: 099 Oct. 19 1958 16.45.23



N1/2SEC.04-T09N-R06E

540 W. INDUSTRIAL LAKE DR.,  
SUITE 1 - LINCOLN, NE 68528  
(402) 476-3020  
(402) 476-3138 FAX

# SURVEY RECORD

## K&M Inc.

### Land Surveying

STATE OF NEBRASKA

PROJECT # 992011A  
DATE: 1-31-99 S/P: FILE

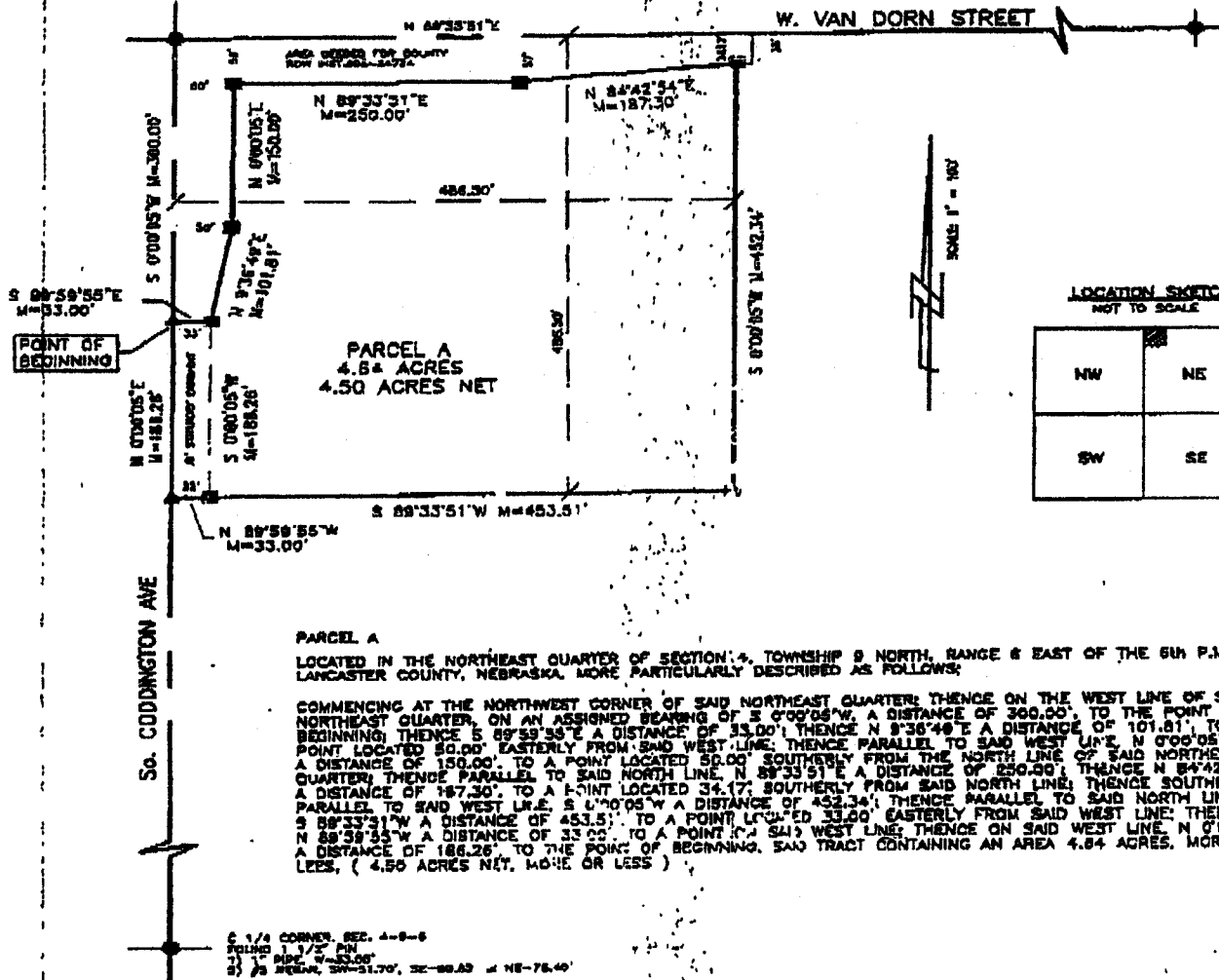
Survey Of: PART OF THE NORTHEAST QUARTER OF

Section: 4 . T 9 N, R 6 E, of the 6th P.M. LANCASTER County, Nebraska

W. VAN DORN St. & So. CODDINGTON AVE

NE CORNER, NW 1/4, SEC. 3-8-6 (OR)  
FOUND L&L. OF SURVEY MARKER  
BY J. E. BARNES & S. P. S-33.00' N 8-163.00'  
BY J. E. BARNES & S. P. S-33.00' N 8-163.00'  
1" P.P.E. S-42.63' & S-41.55'

SW CORNER, NE 1/4, SEC. 3-8-6  
FOUND L&L. OF SURVEY MARKER  
BY J. E. BARNES & S. P. S-33.00' N 8-163.00'  
BY J. E. BARNES & S. P. S-33.00' N 8-163.00'



LOCATION SKETCH  
NOT TO SCALE

NW	NE
SW	SE

#### PARCEL A

LOCATED IN THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6th P.M., LANCASTER COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER; THENCE ON THE WEST LINE OF SAID NORTHEAST QUARTER, ON AN ASSIGNED BEARING OF S 89°59'55" W, A DISTANCE OF 300.00', TO THE POINT OF BEGINNING; THENCE S 89°59'55" E A DISTANCE OF 33.00'; THENCE N 89°33'51" E A DISTANCE OF 101.81', TO A POINT LOCATED 50.00' EASTERLY FROM SAID WEST LINE; THENCE PARALLEL TO SAID WEST LINE, N 0°00'05" E A DISTANCE OF 150.00', TO A POINT LOCATED 50.00' SOUTHERLY FROM THE NORTH LINE OF SAID NORTHEAST QUARTER; THENCE PARALLEL TO SAID NORTH LINE, N 89°33'51" E A DISTANCE OF 230.00'; THENCE N 89°42'54" E A DISTANCE OF 187.30', TO A POINT LOCATED 34.17' SOUTHERLY FROM SAID NORTH LINE; THENCE SOUTHERLY PARALLEL TO SAID WEST LINE, S 0°00'05" W A DISTANCE OF 452.34'; THENCE PARALLEL TO SAID NORTH LINE, S 89°33'51" W A DISTANCE OF 453.51', TO A POINT LOCATED 33.00' EASTERLY FROM SAID WEST LINE; THENCE N 89°29'33" W A DISTANCE OF 33.00', TO A POINT ON SAID WEST LINE; THENCE ON SAID WEST LINE, N 0°00'05" E A DISTANCE OF 166.26', TO THE POINT OF BEGINNING. SAID TRACT CONTAINING AN AREA 4.84 ACRES, MORE OR LESS, (4.50 ACRES NET, MORE OR LESS).

1/4 CORNER, SEC. 4-8-6  
FOUND L&L. OF SURVEY MARKER  
BY J. E. BARNES & S. P. S-33.00' N 8-163.00'  
BY J. E. BARNES & S. P. S-33.00' N 8-163.00'

Subject property apparently falls within the confines of Zone " " as determined by the FEMA-FIA Flood Rate Map community \_\_\_\_\_, panel \_\_\_\_\_, revised \_\_\_\_\_.

Public Hearing - Wednesday, November 3, 1999, 1:00 p.m.

CHANGE OF ZONE NO. 3196

I am Clarice Loomis and reside at 2145 West Van Dorn. I am here to request that zoning on my property remain B-1 and change the R-3 and AGR on the south and west boundaries to B-1.

I am owner of C and L Dairy Sweet and the 2 1/2 acres in question. Legal description is Lots 21, 22 and 25 NW 4-9-6, on the southwest corner of Coddington and West Van Dorn. I have been the owner of this property since 1965, resident of the Yankee Hill area for these past 35 years and owner/operator of the Dairy sweet for the past 20 years.

Chapter 27.31.030 of the statutes states that: "B-2 Planned Neighborhood Business District zoning shall not be permitted or granted upon any property having a total area of less than five acres." Most of my 2 1/2 acres is zoned B-1 and I fail to agree with the proposal to combine three parcels that are not adjoining in order to create an area larger than five acres.

The intersection was widened two years ago and most of the right-of-way was increased to 50 feet on the two street sides of my property at that time. If my zoning is changed to B-2 and another 50-foot set back is possible on all four sides, this greatly reduces the available use of my property.

Residents to the south and west were aware this property was business when they moved in. Both are acreages and the houses and my property are separated by their pastures.

I have been in Pioneers Park and located the three corridors. When viewing the Capitol Building down the corridor over my property, even utility poles are not visible. This intersection is not near a main highway or thorough fare that would warrant any sign taller than the utility poles. I feel the concern over tall signs on this intersection is unfounded.

I started the Dairy Sweet 20 years ago. I have a great deal of pride in my neighborhood, even to the extent of mowing and weed spraying the county owned islands that used to be in the intersection. Southwest Lincoln is beginning to have more residents and the business zoning must be kept as desirable as possible for businesses that will be needed in the future. As stated earlier, I have owned this corner for 35 years and it has always been zoned B-1.

Thank you for your consideration to my request.

*Clarice Loomis*

## CHANGE OF ZONE NO. 3196

### PUBLIC HEARING BEFORE PLANNING COMMISSION:

November 3, 1999

Members present: Newman, Schwinn, Steward, Hopkins, Duvall, Taylor and Bayer; Hunter declared conflict of interest; Krieser absent.

Planning staff recommendation: Approval.

### Proponents

**1. Steve Henrichsen of Planning staff** submitted a letter from Don Linscott of Mega Corporation on behalf of the property owner on the southeast corner of Coddington & Van Dorn about expanding the B-1 boundary to the east. The owner being represented by Me. Linscott has purchased the B-1 zoned property on the southeast corner and his letter addresses the potential to expand the proposed B-2 zoning to the east. He has talked with ESP about bringing the sanitary sewer over to serve the site and is asking to add frontage along Van Dorn.

Henrichsen went on to explain the background as to why the Planning Director is proposing this change. This is one of three changes before the Commission today along W. Van Dorn and Coddington over to the West Bypass. Most of the area involves property either owned by the State, City, County or NRD. This particular change, however, is all privately owned property at this point in time. The main reason the Planning Director is coming forward with this change is due to the fact that the character of the area is changing; northeast of this property is the Lee's Place preliminary plat and another request that is coming forward to expand the B zoning for B-2 to the north of Lee's Chicken; this particular area is in one of the Capitol View corridors out of Pioneers Park toward the State Capitol. The Capitol Environs Commission does recommend this change from B-1 to B-2. It is the staff's intent to still allow for development rights. One of the most important differences is that the B-2 zoning would allow review of any future pole signs for their impact on the Capitol View Corridor and building heights. B-2 does not allow off-premise signs for billboards. The staff also believes B-2 is more in character with this developing area with single family homes developing to the north and east. It will allow for existing businesses to continue but would have a little more review in terms of development. Staff has talked with all property owners in advance.

Steward asked Henrichsen to review the height restriction in the Capitol View corridor. Henrichsen explained that the Capitol View corridor itself does not have any height restrictions. There are height restrictions once you are in the Downtown area. Therefore, this Capitol View corridor that starts at Pioneers Park, other than being identified in the plan, does not have any height restrictions. Steward believes that by implication it calls height into question. Henrichsen concurred. Depending on the



topography, a pole sign of a certain height may be appropriate, but without having an opportunity to review it, you wouldn't know whether it would have an impact or not.

In regard to the lot lines versus zoning lines, Henrichsen explained that the B-1 zoning line was arbitrarily drawn back in the 50's at 250' x 250', with no relation to lot lines. On the southwest corner the zoning does not match the lot lines at all. The owner of this corner was not interested in making a change. On the northeast corner, the zoning also does not match the lot line at all. In fact, part of the Lee's Chicken parking lot actually sits in R-3 zoning. The staff is proposing that the entire Lee's Chicken property be all B-2 rather than part B-1 and part R-3, thus expanding the commercial property.

### Opposition

1. **Lynn Darling**, 2601 S.W. 23<sup>rd</sup>, testified at this point in time; however, she is in between support and opposition. She likes the overall approach, but she is against expanding the Sampson corner (southeast corner). She personally would like to see the Sampson property revert back to AG because that area is in the floodplain and is wetlands. She does not know where they are going to put the water. It is an extensive amount of water at times. She is guessing that it will be filled in and then where is that water going to go? Nobody has any business building on this corner. Plus the fact that it is slowly encroaching on the view to Pioneers Park, especially when you start cutting down all those trees. There will be no quality of life if we allow commercial to desecrate what little pieces of green are left, especially in floodplain and wetlands.

2. **Clarice Loomis**, 2145 W. Van Dorn, requests that zoning on her property remain B-1 and change the R-3 and AGR on the south and west boundaries to B-1. Her property is the ice cream store (Lots 21, 22 and 25, on the southwest corner of Coddington and W. Van Dorn). She wants the B-1 to extend to her property line. She has owned this property since 1965 and has been a resident of the Yankee Hill area for the past 30 years. She has been the owner and operator of the Dairy Sweet for the past 20 years. Ms. Loomis referred to section 27.31.030, which states that B-2 shall not be permitted or granted upon any property having a total area of less than 5 acres. Most of her 2.5 acres is zoned B-1 and she disagrees with combining three parcels that are not adjoining in order to create an area larger than 5 acres. The intersection was widened two years ago and the right-of-way was widened at that time. If her zoning is changed to B-2, this greatly reduces the available use of her property. Residents to the south and west were aware this was business property when they moved in. Both are acreages and the houses and her property are separated by pastures. When viewing the Capitol building down the corridor over her property, even utility poles are not visible. This intersection is not near a main highway or thoroughfare that would warrant any sign taller than a utility pole. She suggests that the staff's concern about tall signs is unfounded. She started the Dairy Sweet 20 years ago and she has a great deal of pride in her neighborhood, even to the extent of mowing and weed spraying the county islands. This corner has always been B-1.

Bayer clarified with Ms. Loomis that she is asking to retain the B-1 and expand the rest of the area to B-1 so that it goes to the property line. The staff is requesting B-2. Ms. Loomis stated that she does not care about the other two corners, but she wants to remain B-1.

**3. John Herrod**, 2500 W. Van Dorn, testified in opposition. He spends a lot of time at 2145 W. Van Dorn. He supports the discussion about wetlands on the southeast corner. He has seen a lot of wildlife over there; he frequently sees deer running through there; he thinks some real consideration should be given to this property and he believes it would be considered wetlands. He supports Ms. Loomis' testimony--that corner has always looked good. She has been very supportive of the neighborhood.

**4. Pat Herman**, 3021 S. Coddington, testified in opposition and in defense of Ms. Darling's request to not change the zoning on the southeast corner. She has lived in this area for 30 years and it has always been a wildlife area with trees. She does not want to have to worry about flooding.

**5. Glenn Cekal**, 1420 C Street, testified in opposition. This is one of his most favorite parts of the City. He has spent many, many hours out there. The southeast corner needs to be a part of the park or something that looks just like the park, whether it be a nature conservation place or whatever. The bottom line is that it should be preserved as a natural setting. We should expand Pioneers Park. It needs to be put on a protection mode and keep the commercial aspect away entirely. It would not be wise to build anything there.

Rick Peo, City Attorney's office, advised that any expansion of the zoning area would require readvertising. It would be up to the staff to expand that application or the property owner should file the proper application and filing fee.

Hopkins inquired about the buildable area on the east. If we don't consider most of that area buildable or serviceable, is it really a drainageway versus wetlands? Henrichsen advised that the property on the southeast corner is B-1 today and could be developed. It is technically not in a FEMA 100-year floodplain. There are areas previously identified in the national wetlands inventory and this property is not previously identified as such. There is very certainly a drainageway through the middle of the property and through part of the expansion area. It is possible that the Corps of Engineers might identify wetlands, but as of this time, there is no information that shows it is wetlands.

Henrichsen also noted that the property is currently zoned B-1. The staff is proposing to change it to B-2. Most of the speakers are wanting a non-B district--something away from the current B-1 zoning.

As to the distinction between B-1 and B-2, Steward noted that a use permit would be required on the B-2 for almost every proposal that would be made for commercial. Henrichsen responded, stating that the southeast corner would have to get a use permit before it gets a building permit. As it exists at B-1, the use permit review is not

required.

Henrichsen further explained that the proposal was to try to update the zoning to the district which reflects the changes and uses going on rather than trying to downzone any of the particular corners away from B-1. This proposal was not in any way meant to be a reflection on Lee's Chicken or the Dairy Sweet property. Staff is just trying to look into the future. The subdivisions that were once ½ mi. removed from the corner, are getting closer to Van Dorn Street and will certainly change some of the character of the area and the relationship between the businesses and the homes. We are attempting to look beyond in the future when the Dairy Sweet or Lee's Chicken might move to another location.

Schwinn inquired whether the Mega Corporation bought more property. Henrichsen believes that they bought a four-acre piece of property which goes further to the south and further to the east as well. There is another change of zone on today's agenda that does reflect a change of zone to the property on the outside.

Of the three property owners involved, Bayer clarified that one supports this and two are opposed. Henrichsen advised that Don Linscott does not appear to be necessarily opposed to B-2, and he does not believe the Lee's Chicken property owner is represented today. Staff has heard from the southwest corner who wants to remain B-1.

Newman wondered whether this is meant to address the concern about the southeast parcel--the best way to protect what goes on there is to change it to B-2 rather than leave it B-1. Henrichsen concurred and suggested that the opposition wants to change the B-1 to AG, with no commercial use. The intent of the proposal is that the B-2 would give us more ability and better landscape review and setbacks through review of the use permit over the B-1.

Bayer confirmed that they could not do anything there without coming forward with a use permit under the B-2. Henrichsen concurred. Taylor commented that the B-1 has less protection for that area than the B-2. Henrichsen concurred.

**6. David Hunter** appeared on behalf of Stockwell, L.L.C., owner of the southeast corner, in opposition. He does not want to deal with having to apply for a special use permit under B-2. He gains nothing from that perspective. The property is already B-1. His understanding of the B-2 was that it was more or less a signage issue, but to have to come crawling in here for a use permit for that part of town does not appeal to him. Based on that he would support leaving it as B-1.

Bayer referred to the letter from Don Linscott which implies that he is representing the property on the southeast corner and he likes the B-2 proposal and wants more of it. Hunter's conversation with Don Linscott did not include an extensive discussion regarding the special use permit under B-2. That is not what they desire. When you

start downzoning it creates a real concern for him. Based on the special use permit requirement, that puts them in a difficult position. Downzoning without the property owner's agreement is a serious step.

Hopkins asked Hunter whether he is concerned knowing that a lot of what may not be buildable with the way the water is flowing at this time. Hunter stated that he is not a hydrologist and he does not know, but the zoning would not make any difference relating to that question. Hunter does not believe anyone in his partnership would be interested in developing anything that would create serious water flows in the wrong direction. The property will have to be elevated and corrected to get sewer. They could put a commercial establishment there with a septic system now. They will not create a watershed problem.

Hopkins was concerned about downzoning when the applicant is not the owner. Rick Peo, City Law Department, advised that there is nothing illegal about downzoning, particularly with vacant land. The owner has not put it to any particular use. The city has the right to change the zone if it is appropriate and not an arbitrary and capricious action. He believes it is justified based on protecting the residences that are being built in the area.

Hopkins then asked what could be done on B-1 that could not be done on B-2. Peo advised that there are relatively minor distinctions other than different setbacks, not parking in the front yard; in other words, site restrictions. He would not call this a true downzone because you are not going to lesser uses, but it is more restrictive.

Newman was curious about the net effect of the additional four weeks for use permit review. Bayer observed that if you need a use permit for B-2 and you don't for B-1, the Commission could deny the use permit, but in order to deny it, the Commission must have justifiable basis to deny that use. Right now they can get a building permit in B-1 without going through the public hearing process.

#### Response by the Applicant

Henrichsen stated that staff has tried as much as possible not to characterize this as a downzone, but more of a "sideways" zone. While B-2 does have larger setbacks limiting the buildable area, it allows the City Council to adjust that, which cannot be done in the B-1. To some degree, you might be able to increase the buildable area because of this flexibility under B-2. Secondly, he agrees with a lot of the opposition in that he believes this is a nice area of town--the landscaping, etc., and that is why it warrants a use permit. This area needs the same type of review as other developing areas of town.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** November 3, 1999

Steward moved to approve the staff recommendation, seconded by Newman.

Steward sees three strong reasons for this action at this particular site. One is that the Capitol View corridor is an overlay on top of it; second, is that it has potential drainage issues; and third, is that it is becoming residential. When this was first designated in the Comprehensive Plan as B-1, the residential development was quite distant, and he believes the B-2 is set up so that this Commission and the City Council have the opportunity to look at the compatibilities and conflicts of commercial and business activities.

Bayer's comments were that we are doing things against the wishes of two property owners and he has difficulty doing that.

Motion to approve failed 4-3: Newman, Steward, Hopkins and Taylor voting 'yes'; Schwinn, Duvall and Bayer voting 'no'; Hunter declaring a conflict of interest; Krieser absent.

Bayer asked for advice from the City Attorney. If the Commission deadlocks at 4-4, what happens? Peo believes that at that point in time the person with the conflict of interest can be allowed to vote to move it forward, but he would like to double-check that. The Commission cannot hold it in limbo, however.

Hopkins moved approval, seconded by Newman.

Hopkins does not believe this change will be too burdensome for any of the property owners. Being sensitive to an area in that neighborhood and how important that development is, she does not believe the additional review will be burdensome to the owners. That is why she can support it. Newman agreed. She does not see this Commission turning down anything that is a quality development on that corner as long as it is done right.

Bayer stated that he would be changing his vote in order to move the application forward; however, he is opposed to the concept. We have had great property owners that have not abused the system as B-1, so why put this burden on them?

Hopkins noted that it might add more review, but it also adds more flexibility. This is a trade-off to her.

Taylor would like to leave it as B-1 because he thinks that we want it to be up to the individuals who own the property to do the right thing, but he is voting B-2 because he thinks we really need to have a little more assurance that this is going to be protected.

Motion for approval carried 6-1: Newman, Schwinn, Steward, Hopkins, Taylor and Bayer voting 'yes'; Duvall voting 'no'; Hunter declaring a conflict of interest; Krieser absent.